IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
Arbitration Application No.119 of 2005

M/s. Fairmacs Shipping & Transport
Services Pvt. Ltd. Applicant

Vs.

The National Insurance Co.Ltd. Respondent

Mr.H.H.Trivedi for applicant.
Mr.A.S.Vidyarthi for respondent.

CORAM: B.H.MARLAPALLE, J.

February 17, 2006.

P.C.

. Heard the learned counsel for the respective parties. The applicant-firm has filed this application for the appointment of the sole arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996. The respondent-Insurance Company has filed reply and contended that this application cannot be allowed because the insurance policy issued by the Insurer does noes not cover the loss caused to the property of the applicant's sister-concern by name M/s.Draft Cargoways (I) Pvt. Ltd.

. It appears that on 7th November 2001 some furniture had caught fire in the applicant's premises and they claimed recovery of loss from the Insurance

Company on the basis of the insurance policy drawn. The licensed surveyor submitted his report on 18th October 2002 and assessed the claim of the applicant at Rs.6,29,061/- whereas the claim of M/s. Draft Cargoways (I) Pvt. Ltd. came to be assessed at Rs.6,80,600/-. On the demand made by the applicant the respondent-Insurance Company offered an amount of Rs.6,29,061/-. The applicant's claim for the balance amount of Rs.6,80,600/- which was in respect of the loss caused to the sister concern, the Insurance Company claims that the other company i.e. M/s. Draft Cargoways (I) Pvt. Ltd. had not drawn a policy and, therefore, its claim cannot be considered.

. A copy of the policy drawn is placed on record at Exhibit "A" and it is called as "Office Package Policy Proposal-Cum-Policy Schedule". The applicant's name has been shown as the proposer and apart from Rs.15 lakhs as the sum insured for building, land, sanitary fittings and canteen etc., other items insured are telephone, gas, electronic meters, interior decoration and office appliances. The report submitted by the surveyor has clearly stated that the loss caused to the applicant in

respect of the damage to the furniture, fixtures and fittings etc. is at Rs.5,86,461/-. For the electronic equipments it is valued at Rs.42,600/- and for the office appliances it is shown as nil. Similarly for telephone, gas and electronic meters also it is shown as nil.

. As against this the claim in respect of the other company viz. M/s. Draft Cargoways (I) Pvt. Ltd. has been estimated as under by the very same firm of Surveyors:

(a) Telephone, Gas and Electric Meters Rs.2,11,250/-

(b) Electronic equipments Rs.2,24,800/-

(c) Office appliances Rs.2,44,550/-.

Along with the office package policy there is no separate schedule of the electronic equipments, office appliances as well as telephone, gas and electric meters in respect of both the companies. The learned counsel for the applicant states that the other company has already raised a claim against the

applicant vide its letter dated 31-5-2002. Whether the loss caused to M/s. Draft Cargoways (I) Pvt. Ltd. is required to be made good by the applicant is the first question and whether the said claim is covered by the office package policy no. 250700/48/2001/2100322 is the second question and both of them cannot be adjudicated by an arbitral tribunal to be appointed on the basis of the said policy. It is a matter of civil dispute between the parties and which could by decided by a civil Court.

. Hence the application is rejected as not tenable in respect of the claim of M/s.Draft Cargoways (I) Pvt. Ltd. and it is made clear that the respondent shall pay to the applicant the admitted amount of Rs.6,29,061/- in respect of M/s. Fairmacs Shipping & Transport Services Pvt.Ltd. without asking for the full and final claim covering the claim of other company i.e. M/s. Draft Cargo-ways (I) Pvt.Ltd.

(B.H.MARLAPALLE,J.)